



United States Attorney  
Southern District of New York

---

86 Chambers Street  
New York, New York 10007

September 7, 2018

**VIA ECF and BY HAND**

Hon. Gabriel W. Gorenstein  
United States Magistrate Judge  
United States District Court  
500 Pearl Street  
New York, New York 10007

**Re:    *ACLU v. Dep't of Health and Human Services, et al.,*  
No. 17 Civ. 5514 (GBD) (GWG)**

Dear Judge Gorenstein:

This Office represents defendants the Department of Health and Human Services, the Department of Justice, the Department of Labor, and the Department of the Treasury in the above-referenced proceeding brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* Having consulted with counsel for plaintiff, we respectfully submit this letter pursuant to the Court's order dated November 2, 2017, which directs the parties jointly to report on the status of this matter every sixty days. *See* ECF No. 27. The parties submitted their first such report on January 2, 2018, their second report on March 5, 2018, their third report on May 4, 2018, and their fourth report on July 11, 2018. *See* ECF Nos. 28, 31, 34, 36. This is the parties' fifth report.<sup>1</sup> Except for the pending items described below, defendants have completed their responses and ACLU has indicated that it is not challenging those responses.

**Department of Health and Human Services ("HHS"):** The only remaining item with regard to HHS relates to non-exempt, responsive records potentially maintained by one additional custodian in the Office of General Counsel. HHS initially had anticipated completing its response in this regard by September 10, 2018, but requires a few additional weeks, to which ACLU does not object.

**Department of Justice ("DOJ"):** Responses remain pending from two DOJ components, namely, the Office of Information Policy ("OIP") (which is processing plaintiff's FOIA request on behalf of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney

---

<sup>1</sup> The parties apologize for the belated submission of this report, which was originally due September 4, 2018, but was delayed due to scheduling issues. We respectfully request that the Court accept this report *nunc pro tunc*.

General, Legislative Affairs, and Legal Policy) and the Office of Legal Counsel (“OLC”). OIP and OLC each anticipate completing their respective responses next week.

In addition, OIP has been informed of technical issues which may have affected searches conducted in response to this request. While at this time OIP has no indication that additional records responsive to this request will be located, OIP has been working closely with its electronic search support team to resolve these issues and to re-run searches as appropriate to ensure that no records were missed in the original searches. In the event that OIP locates any additional records responsive to this request, OIP will issue a supplemental response to Plaintiff, releasing any non-exempt material.

Department of Labor (“DOL”): Responses remain pending from two DOL components, namely, the Office of Federal Contract Compliance Programs (“OFCCP”) and the Employee Benefits Security Administration (“EBSA”). OFCCP and EBSA anticipate completing their respective responses next week.

Pursuant to the Court’s November 2 Order, the parties will provide their sixth status report on or before November 5, 2018.

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney  
Southern District of New York

By: s/ Michael J. Byars  
MICHAEL J. BYARS  
Assistant United States Attorney  
Telephone: (212) 637-2793  
Facsimile: (212) 637-2717  
E-mail: michael/byars@usdoj.gov

cc: Joshua Block, Esq. (via ECF)